

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Larry Lorenzo Downing,
10 Petitioner/Defendant,
11 v.
12 United States of America,
13 Respondent/Plaintiff.
14

No. CV-17-03898-PHX-GMS
No. CR-09-00709-04-PHX-GMS

ORDER

15 Pending before the Court is the Report and Recommendation of United States
16 Magistrate Judge James F. Metcalf, (Doc. 14), which recommends that the Motion to
17 Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 of Petitioner Larry
18 Lorenzo Downing (Doc. 1) be denied. Downing timely filed objections to the R&R. (Doc.
19 15). Also pending before the Court is Downing’s Motion to Request Concurrent Sentences
20 (Doc. 16) and Motion to Appoint Counsel (Doc. 18). For the following reasons, the Court
21 adopts the R&R and denies the Motions for Concurrent Sentences and to Appoint Counsel.

22 **BACKGROUND**

23 Because no party has objected to the factual and procedural background set forth in
24 the R&R, the Court adopts the background as an accurate account.

25 **DISCUSSION**

26 **I. Legal Standards**

27 This court “may accept, reject, or modify, in whole or in part, the findings or
28 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). “[T]he district

1 judge must review the magistrate judge's findings and recommendations de novo *if*
2 *objection is made*, but not otherwise. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121
3 (9th Cir. 2003) (*en banc*) (emphasis in original). District courts are not required to conduct
4 "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*,
5 474 U.S. 140, 149 (1985).

6 **II. Analysis**

7 **A. Motion to Vacate, Set Aside or Alter**

8 Downing's Motion to Object (Doc. 15) states that Downing "hereby objects to the
9 district court ruling. From paragraphs C, one through five." (Doc. 15 at 1). However,
10 Downing fails to give any further detail regarding what his objections are to the R&R. The
11 Court is unable to conduct meaningful review of the R&R because the objection fails to
12 point to any facts or make any legal arguments on which the Court could rule in his favor.

13 **B. Motion for Concurrent Sentence**

14 Downing has also filed a Motion to Request Concurrent State Sentence with Federal
15 Sentence (Doc. 16). Downing's motion states that he has approximately eight months
16 remaining on his Arizona state sentence, and that he "could transfer to Federal Detention
17 [sic]." (*Id.* at 16). Even construing Downing's *pro se* filing liberally, his Motion sets forth
18 no legal or factual arguments upon which the Court could rule in his favor.

19 **IT IS THEREFORE ORDERED** adopting the Report and Recommendation of
20 Magistrate Judge Metcalf (Doc. 14) in full.

21 **IT IS FURTHER ORDERED** that Ground One and the portion of Ground Two
22 related to ineffective assistance in Downing's supervised release revocation of Petitioner
23 Larry Lorenzo Downing's Motion to Vacate, Set Aside or Correct Sentence (Doc. 1) is
24 construed as a petition for writ of habeas corpus under 28 U.S.C. § 2241 and is **DENIED**.

25 **IT IS FURTHER ORDERED** that the remainder of Petitioner's Motion to Vacate,
26 Set Aside or Correct Sentence (Doc. 1) is **DISMISSED WITH PREJUDICE** as untimely.
27 The Clerk of Court is directed to terminate this action and enter judgment accordingly.

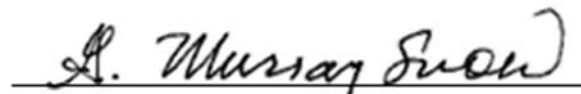
28 *///*

1 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**
2 because reasonable jurists would not find the Court's procedural ruling as debatable. *Slack*
3 *v. McDaniel*, 529 U.S. 473, 484 (2000).

4 **IT IS FURTHER ORDERED** that Petitioner's Motion to Request Concurrent
5 State Sentence with Federal Sentence (Doc. 16) is **DENIED**.

6 **IT IS FURTHER ORDERED** that Petitioner's Motion to Appoint Counsel (Doc.
7 18) is **DENIED AS MOOT**.

8 Dated this 8th day of April, 2019.

9
10 
11 G. Murray Snow
12 Chief United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28